U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 10 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Rachel M Irenio
for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a business providing physical rehabilitation services. It seeks to permanently employ the beneficiary in the United States as a physical therapist. The petitioner requests classification of the beneficiary as a member of the professions holding an advanced degree or an alien of exceptional ability pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by a labor certification approved by the U.S. Department of Labor (DOL).

In his decision denying the petition, the director concluded that the petitioner had failed to establish its continuing ability to pay the proffered wage or that the proffered position constituted a *bona fide* job offer.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

On May 1, 2013, the AAO sent the petitioner a Notice of Derogatory Information and Request for Evidence (NDI/RFE), with a copy to counsel of record. In its notice, the AAO informed the petitioner that records maintained by the Virginia State Corporation Commission indicated that its status had been revoked and that the petition and appeal would be considered moot if the petitioner was no longer in business. The AAO asked the petitioner to submit evidence establishing that its status had been restored.

The May 1, 2013 notice also advised the petitioner that the record did not establish its ability to pay the proffered wage and requested the submission of evidence relating to the multiple Form I-140 beneficiaries for whom it had filed employment-based immigrant visa petitions since the May 26, 2010 priority date. The notice further asked for copies of the petitioner's federal income tax returns and/or audited financial statements for 2011 and 2012, and Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements (Forms W-2) or Forms 1099 issued to the beneficiary in 2011 and 2012. The notice indicated that failure to submit requested evidence that precluded a material line of inquiry would be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

---

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The petitioner responded to the NDI/RFE on June 19, 2013, providing a copy of the Corporation Application for Reinstatement it indicated had been filed with the Virginia State Corporation Commission. The reinstatement application is dated June 12, 2013. The petitioner also submitted a list of the individuals for whom it has filed Form I-140 petitions, but did not provide all of the information requested by the AAO regarding these individuals. The petitioner's response further included its 2011 federal tax return, 2011 and 2012 IRS Forms W-2 for the beneficiary, and 2010 – 2012 IRS Forms W-2 for other Form I-140 beneficiaries.

While the AAO acknowledges the reinstatement application submitted by the petitioner, the application, by itself, does not establish that the petitioner is once again in good standing in the State of Virginia. Moreover, as of this date, online records of the Virginia State Corporation Commission continue to report that the petitioner's status has been revoked. Therefore, in the absence of any documentation establishing the petitioner's reinstatement, the AAO must conclude that its business is not in good standing in Virginia, the state in which the job opportunity was certified. Accordingly, the instant appeal will be dismissed as moot.

However, even if the record were to establish the reinstatement of the petitioner, it would not demonstrate the petitioner's ability to pay the proffered wage.

In its May 1, 2013 notice, the AAO requested the petitioner's tax returns for 2011 and 2012 or its audited financial statements for these years. In response, the petitioner submitted its 2011 return, indicating that it had not yet filed its federal tax return for 2012. However, the Publication 509, IRS Tax Calendars for Use in 2013, http://www.irs.gov/publications/p509/ar02.html#en_US_2013_ (accessed September 5, 2013), indicates that corporations, which, like the petitioner, file Form 1120 tax returns were required to submit their 2012 tax returns by March 15, 2013 and the AAO notes that the 2011 return provided by the petitioner reflects that it was prepared on March 7, 2012. The AAO further finds no copy of IRS Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, in the record, which would indicate that the petitioner had applied for an extension of the March 15, 2013 filing deadline. Accordingly, the record does not support the petitioner's claim that its 2012 tax return was not yet available at the time of the AAO's May 1, 2013 request for this evidence.

The petitioner has also submitted incomplete evidence in response to the AAO's request for information relating to the other individuals for whom it has filed Form I-140 petitions since May 26, 2010. Although the petitioner has provided IRS Forms W-2 to establish the actual wages it paid these beneficiaries during the period 2010 through 2011, it has failed to submit information regarding the proffered wages for these individuals, as reflected on the labor certifications underlying the Form I-140 petitions benefitting them.

In the petitioner's response to the AAO's May 1, 2013 notice, counsel indicates that the petitioner requires more time to produce the requested information. As of the date of this decision, however,

the AAO finds the petitioner to have submitted no information to supplement that which it provided in its June 19, 2013 response to the NDI/RFE.

Therefore, even if the record established the petitioner's reinstatement in Virginia, the petitioner has failed to provide financial evidence and has therefore precluded a material line of inquiry into its ability to pay the beneficiary the proffered wage. As previously indicated, failing to provide evidence that precludes a material line of inquiry is a basis for the dismissal of an appeal pursuant to the regulation at 8 C.F.R. § 103.2(b)(14). Further, absent the 2012 tax return and proffered wage evidence requested by the AAO, the record does establish that the petitioner has the ability to pay the proffered wage to the beneficiary and the other individuals for whom it has filed Form I-140 petitions.

The records of the Virginia State Corporation Commission indicate that the petitioner's business has been revoked and the petitioner has not established that it has been reinstated. The instant appeal is therefore moot.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed as moot.